

Article - Public Utilities

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§6–105.

(a) In this section, “affiliate” has the meaning stated in § 7–501 of this article.

(b) (1) The General Assembly finds that:

(i) existing legislation requires the approval by the Commission of the acquisition by one public service company of another public service company’s stocks and obligations, but does not require the Commission’s approval of these acquisitions by persons not engaged in the public utility business in the State; and

(ii) an attempt by a person not engaged in the public utility business in the State to acquire the power to exercise any substantial influence over the policies and actions of a public service company that provides electricity or gas in the State could result in harm to the customers of the public service company, including the degradation of utility services, higher rates, weakened financial structure, and diminution of utility assets.

(2) The General Assembly declares that it is the policy of the State to regulate acquisitions by persons that are not engaged in the public utility business in the State of the power to exercise any substantial influence over the policies and actions of a public service company that provides electricity or gas in the State in order to prevent unnecessary and unwarranted harm to the customers of the public service company.

(c) This section applies to the acquisition of an electric company, gas and electric company, or a gas company that operates in Maryland.

(d) (1) A gas and electric company, at the same time as a filing by the company or within 10 days after receipt by the company, shall provide the Commission with a copy of any document regarding the acquisition of voting securities of the gas and electric company or any company that owns or controls the gas and electric company, filed or received by the company, that is filed with:

(i) the Securities and Exchange Commission;

(ii) the Federal Energy Regulatory Commission;

- (iii) the Nuclear Regulatory Commission;
- (iv) the Department of Justice;
- (v) the Federal Trade Commission; or
- (vi) any successor agency.

(2) The Commission shall provide the gas and electric company with the same confidentiality and other protections provided by the federal agency with which the filing was made.

(e) (1) Without prior authorization from the Commission, a person may not acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric company, gas and electric company, or gas company, if the person would become an affiliate of the electric company, gas and electric company, or gas company as a result of the acquisition.

(2) For the purposes of this subsection, a person may not be considered to have acquired, directly or indirectly, the power to exercise any substantial influence over the policies and actions of a gas and electric company if the person:

(i) after any acquisition of voting interests of a company that owns or controls a gas and electric company, directly or indirectly, owns, controls, or has the right to vote, or direct the voting of, not more than 20% of the outstanding voting interests of a company that owns or controls a gas and electric company; and

(ii) does not have the right to designate more than 20% of the board of directors or other governing body of a company that owns or controls a gas and electric company.

(3) Paragraph (2) of this subsection may not be construed to apply to the acquisition of any voting interests of a gas and electric company.

(4) If a person that acquires voting securities of a company that owns or controls a gas and electric company after the acquisition actually exercises substantial influence over the policies and actions of a gas and electric company, the Commission may order compliance with, and take any actions authorized by, other provisions of this article with respect to the gas and electric company.

(f) An application for authorization under subsection (e) of this section must include detailed information regarding:

- (1) the applicant's identity and financial ability;
- (2) the background of the key personnel associated with the applicant;
- (3) the source and amounts of funds or other consideration to be used in the acquisition;
- (4) the applicant's compliance with federal law in carrying out the acquisition;
- (5) whether the applicant or the key personnel associated with the applicant have violated any State or federal statutes regulating the activities of public service companies;
- (6) all documents relating to the transaction giving rise to the application;
- (7) the applicant's experience in operating public service companies providing electricity;
- (8) the applicant's plan for operating the public service company;
- (9) how the acquisition will serve the customers of the public service company in the public interest, convenience, and necessity; and
- (10) any other information that the Commission may specify by regulation or order.

(g) (1) The Commission promptly shall:

(i) examine and investigate each application received under this section; and

(ii) undertake any proceedings necessary or convenient to review the application in accordance with Title 3 of this article and issue an order concerning the acquisition.

(2) The Commission shall consider the following factors in considering an acquisition under this section:

(i) the potential impact of the acquisition on rates and charges paid by customers and on the services and conditions of operation of the public service company;

(ii) the potential impact of the acquisition on continuing investment needs for the maintenance of utility services, plant, and related infrastructure;

(iii) the proposed capital structure that will result from the acquisition, including allocation of earnings from the public service company;

(iv) the potential effects on employment by the public service company;

(v) the projected allocation of any savings that are expected to the public service company between stockholders and rate payers;

(vi) issues of reliability, quality of service, and quality of customer service;

(vii) the potential impact of the acquisition on community investment;

(viii) affiliate and cross-subsidization issues;

(ix) the use or pledge of utility assets for the benefit of an affiliate;

(x) jurisdictional and choice-of-law issues;

(xi) whether it is necessary to revise the Commission's ring fencing and code of conduct regulations in light of the acquisition; and

(xii) any other issues the Commission considers relevant to the assessment of acquisition in relation to the public interest, convenience, and necessity.

(3) (i) If the Commission finds that the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers, the Commission shall issue an order granting the application.

(ii) The Commission may condition an order authorizing the acquisition on the applicant's satisfactory performance or adherence to specific requirements.

(4) If the Commission does not find that the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers, the Commission shall issue an order denying the application.

(5) The applicant bears the burden of showing that granting the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers.

(6) (i) Except as provided in item (ii) of this subparagraph, the Commission shall issue an order with respect to the application no later than 180 days after the filing of the application for authorization.

(ii) Unless the Commission finds, based on good cause, that the 180-day period should be extended for an additional 45 days, failure of the Commission to issue an order within the 180-day period shall be considered to be an approval of the acquisition by the Commission.

(h) Nothing in this section prohibits dissemination by any party of information concerning the acquisition if the dissemination does not otherwise conflict with federal or State law.

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